

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

REGINALD DRAUGHON,

Petitioner,

v.

PAT HURLEY, Warden,

Respondent.

Case No. 2:04-cv-843

JUDGE GRAHAM

Magistrate Judge Abel

ORDER

On June 24, 2005, the Magistrate Judge issued a *Report and Recommendation* recommending that the petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. This matter is before the Court on petitioner's July 8, 2005, objections to the *Report and Recommendation*, and his request for a certificate of appealability.

Petitioner objects to all of the Magistrate Judge's recommendations. Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For the reasons discussed at length in the *Report and Recommendation*, petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is hereby **ADOPTED AND AFFIRMED**. This case is **DISMISSED**.

Petitioner has also requested a certificate of appealability. In his federal habeas corpus petition, petitioner asserts the following claims:

1. Petitioner's due process rights were violated under the Fifth and Fourteenth Amendments to the United States Constitution when the trial court erred in entering judgment against the accused in light of

insufficient evidence to sustain a conviction.

2. Petitioner was denied the effective assistance of appellate counsel, thus depriving him of the rights afforded by the Sixth and Fourteenth Amendments to the United States Constitution.

3. The trial court erred in polling the jury on an incorrect verdict, thus depriving petitioner of his right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

Claim one was dismissed as procedurally defaulted; claims two and three were dismissed on the merits.

Where the Court dismisses a claim on procedural grounds, a certificate of appealability

should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 120 S.Ct. 1595 (2000). Thus, there are two components to determining whether a certificate of appealability should issue when a claim is dismissed on procedural grounds: “one directed at the underlying constitutional claims and one directed at the district court’s procedural holding.” The court may first “resolve the issue whose answer is more apparent from the record and arguments.” *Id.*

When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c)(2). This standard is a codification of *Barefoot v. Estelle*, 463 U.S. 880 (1983). *Slack v. McDaniel*, *supra*. To make a substantial showing of the denial of a constitutional right, a petitioner must show

that reasonable jurists could debate whether (or, for that matter, agree

that) the petition should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.” *Barefoot*, 463 U.S., at 893, and n.4

Id.

Upon review of the record, the Court concludes that petitioner has failed to establish either that reasonable jurists could debate whether the Court was correct in its procedural ruling, or that any of his claims should have been resolved differently. *Id.*

Petitioner’s request for a certificate of appealability therefore is **DENIED**. If petitioner files an appeal from the judgment entered by this Order, the Court will determine whether he is entitled to a certificate of appealability.

The Clerk of Court is **DIRECTED** to enter **JUDGMENT** denying the petition for writ of habeas corpus.

It is so ORDERED.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: July 19, 2005